UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 22

JERSEY SHORE UNIVERSITY MEDICAL CENTER, A DIVISION OF HACKENSACK MERIDIAN HEALTH¹

Employer

and

Case 22-RC-263932

HEALTH PROFESSIONALS AND ALLIED EMPLOYEES, HPAE, AFT/AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Jersey Shore University Medical Center, a Division of Hackensack Meridian Health (the Employer) is engaged in the operation of an acute care hospital providing healthcare and related services. Health Professionals and Allied Employees, HPAE, AFT/AFL-CIO (the Petitioner) seeks to represent the following bargaining unit:

All full time, regular part time, and per diem non-professional employees employed by the Employer at its 1945 Route 33, Neptune, New Jersey, 07753 facility, including ambulatory pharmacy coordinators, ambulatory pharmacy liaisons, ambulatory pharmacy techs, anesthesia assistants, audiology technicians, cardiac clinical technicians, cardiac technicians, catering to you associates, certified medical assistants, cooks, diagnostic imaging aides, dialysis technicians, distribution associates, EEG technicians, endoscopic assistants, environmental service aides, experience ambassadors, experience coordinators, food service associates, hyperbolic oxygen techs, inventory control coordinators, lab assistants, NUS monitor techs, OR service technicians, patient care technicians, patient observers, patient transport aides, PCA trauma techs, perioperative associates, perioperative buyers, pharmacy techs, rehabilitation associates, rehab liaison, SPD equipment technicians, SPD production coordinators, student clinical aides, supply coordinators, teacher associate and ops assistant, teacher associates, technician SPD certified, and unit secretaries; but excluding all business office clerical employees, registered nurses, physicians, managerial employees, confidential employees, technical employees, skilled maintenance employees, other professional employees, guards, and supervisors as defined in the Act.

The parties stipulate, and I find, that this unit is appropriate. The unit includes over 1200 employees who work varying schedules, as the Employer operates 24 hours per day, 7 days per week. Some employees work only weekdays while others work only weekends; some employees work two or three days in the middle of the week; some per diem employees work unpredictable schedules on an as-needed basis; and some employees work nights while other employees work mornings or evenings. The employees speak English, Spanish, and Creole, and the services of interpreters may be required at an in-person election.

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¹ The Employer's name was amended at the hearing.

The only matter at issue is whether to conduct a manual or mail ballot election. No issues were litigated at the hearing.² During the course of the hearing, the Employer filed two Special Appeals regarding witness testimony and an objection to receipt of certain Board exhibits. I denied these appeals. The Employer renews its appeals in its brief. My ruling remains unchanged. As regards the receipt of the exhibits, contrary to the Employer's assertion, I have made my decision based on up-to-date information about COVID-19 rather than "stale data." Although I have focused my evaluation on the status of COVID-19 in Monmouth County, I do not believe that data relating to counties adjacent to Monmouth is irrelevant. Rather, employees, patients, and those involved in the election are likely to travel through adjacent counties on a daily basis. COVID-19 does not observe county boundaries.

As regards the witness testimony, issues related to the method of election are not litigable.³

The Petitioner contends that a mail ballot election would be most appropriate during the pandemic, while the Employer proposes a manual election. The Employer argues that the Board has historically preferred manual elections and that such an election can be held safely on the Employer's premises. The Petitioner argues that given the nature of the proposed bargaining unit, the large number of employees, the scattered schedules for the employees, and the COVID-19 public health emergency, a mail ballot election will enfranchise the most employees and protect the health of all concerned.

I have carefully considered the positions and arguments presented by the parties. As fully discussed below, even though a manual election would be preferable in the absence of the COVID-19 pandemic, I have directed a mail ballot election. This is the most appropriate method of conducting a prompt election in view of the extraordinary circumstances presented by the pandemic. Most importantly, a mail ballot election will enfranchise the greatest number of employees and best protect the health of the voters, party representatives, Board agents, and the general public.

Facts

COVID-19 in New Jersey

The Employer is located in Neptune, New Jersey, which is in Monmouth County. New Jersey is the most densely populated state in the country; overall, measured in absolute residents, Monmouth

In the event a hearing is held during the course of processing the petition, the Hearing Officer will explore the parties' positions regarding election arrangements, but parties shall not be permitted to litigate this issue. Cf. 2 Sisters Food Group, Inc., 357 NLRB 1816 (2011); Halliburton Services, 265 NLRB 1154 (1982); Manchester Knitted Fashions, Inc., 108 NLRB 1366 (1954).

² The petition in this case was filed under Section 9(c) of the Act. The parties were provided opportunity to present evidence on the issues raised by the petition at a hearing held by videoconference before Hearing Officer Eric Pomianowski of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer. The parties were granted an opportunity to file briefs, and both parties did so.

³ Per NLRB Casehandling Manual for Representation Proceedings, Section 11301.4:

County is the eleventh most populated county in New Jersey. It is approximately 60 miles from New York City, the initial epicenter of the COVID-19 pandemic in the United States. On March 9, 2020, New Jersey Governor Phil Murphy issued Executive Order No. 103, which declared a public health emergency and a state of emergency throughout New Jersey. In each subsequent Executive Order issued since March 9, including Executive Order No. 178 issued on August 14, 2020, Governor Murphy has reiterated that a public health emergency and state of emergency still are in effect in New Jersey. The Executive Orders have affected all aspects of life in New Jersey by implementing aggressive social distancing measures (Executive Order No. 104); temporarily directing residents to stay at home (Executive Order No. 107); temporarily shutting down construction projects (Executive Order No. 122); establishing rules for indoor dining (Executive Order No. 157); pausing the resumption of indoor dining (Executive Order No. 158); requiring individuals to wear masks in outdoor public spaces when they cannot socially distance (Executive Order No. 163); and mailing every active registered voter a mail ballot ahead of the general election (Executive Order No. 177). The State of New Jersey has taken these actions in an attempt to preserve public health and safety.

As of August 14, there were over 187,000 documented positive cases of COVID-19 in New Jersey; sadly, at least 14,064 of those cases resulted in death. While the rate of reported new cases of COVID-19 in New Jersey has been decreasing, according to Executive Order No. 173, issued on August 3, "the rate of transmission has increased over the last two weeks, and over the last two weeks, the sevenday rolling average of the number of cases has increased from between 200 and 300 each day to between 400 and 500 each day." As a result, although New Jersey has begun to "reopen," it continues to limit the number of individuals that may gather in an indoor setting, as such gatherings have resulted spikes of COVID-19 throughout the state.

As of August 24, Monmouth County was averaging 2.6 daily new cases per 100,000 population and the infection rate was .81, meaning that on average each COVID-positive person infected .81 other people. At the time of the hearing, this was the most recent information available and thus was entered into evidence by the Employer. However, on September 11, the very same website (covidactnow.org) cited by the Employer revealed that Monmouth County was averaging 5.1 daily new cases per 100,000 population and the infection rate was 1.17, leading the website to warn that "the total number of active cases in Monmouth County, New Jersey is growing at an unsustainable rate. If this trend continues, the hospital system may become overloaded. Caution is warranted." Although the overall rates of COVID infection have improved greatly in the past several months, the rate of transmission in Monmouth County continues to fluctuate dangerously.

The Employer, as a large health care institution, has been directly affected by the pandemic. At the time of the hearing, seven employees were out of work due to positive COVID tests and nine more were out of work pending the results of COVID tests. In addition, there were three COVID-positive patients in the hospital. The Employer notes that these individuals make up only a small percentage of the hospital's overall population of 4260 employees and 458 patients.

⁴ https://covidactnow.org/us/nj/county/monmouth_county?s=1019215, retrieved on September 11, 2020.

The Employer's Proposal

The Employer proposes to hold the election on two consecutive days with three voting periods each day: 5:30 a.m. until 9:30 a.m., 11:00 a.m. until 1:00 p.m., and 5:00 p.m. until 8:00 p.m. The Employer believes that the total polling time of 18 hours would accommodate the large number of voters working varied shifts, but is amenable to adding an extra day of polling. The Petitioner believes that a minimum of three days of polling would be necessary, and that even three days of polling might not be sufficient to accommodate all per diem employees.

The proposed location is what is known as "the old ambulance bay." The bay is 67 feet long and 30 feet deep. It is adjacent to the garage where the majority of employees are required to park. There are walls on three sides of the bay; one wall has three open windows. The fourth side of the bay is open to the outdoors and can be partially concealed with a temporary wall to allow for both privacy and increased air circulation. The Employer proposes to place the Board agent running the election in makeshift plexiglass box in the center of the bay, with two observers socially distanced in one corner; two voting booths in the opposite corner; two voting booths near the entrance and exit; and the ballot box with a second Board agent on the far wall. Alternatively, the Employer suggests reducing the number of voting booths to two to allow the election to be run by a single Board agent.

An open-air parking lot beside the bay would be used for a socially distanced line of up to 100 voters. All employees would be thermoscanned and asked about their health before they joined the line; employees are not permitted on the Employer's premises if they are running a fever or otherwise show symptoms of COVID-19, and temperature checks prior to entering the hospital are part of the Employer's normal policy. In the event of inclement weather, the Employer would cover the parking lot with an open-sided tent. The Employer would also utilize a crowd delineator to keep employees in a socially distant line.

The Employer is willing to provide disposable pencils and disinfecting wipes to all voters. The Employer is also willing to provide personal protective equipment and cleaning supplies as requested or warranted.

Due to the nature of the Employer's business, the election cannot rely exclusively on employees being released to vote in groups, as at any given time a particular employee may be handling an issue vital to a patient. While the Employer is willing to release employees to vote to the extent possible, it expressed a hope that most employees would choose to vote before beginning their shifts. However, the Employer proposes to ensure that no more than 100 employees will be in line at any given time. While the Employer does not expect 100 employees to attempt to vote simultaneously, if the line were to reach 100, further employees wishing to vote would be told to return at another time.

The Employer is amenable to holding both the pre-election conference and the ballot count via videoconference.

<u>Analysis</u>

In response to the evolving realities of the pandemic, on July 6 the Office of the General Counsel issued Memorandum GC 20-10, Suggested Manual Election Protocols. The suggested protocols include polling times sufficient to accommodate social distancing without unnecessarily elongating exposure

among Board agents and observers; the employer's certification in writing that polling area is consistently cleaned in conformity with CDC standards; a spacious polling area, sufficient to accommodate six-foot distancing; separate entrances and exits for voters; separate tables spaced six feet apart; sufficient disposable pencils without erasers for each voter to mark his or her ballot; glue sticks or tape to seal challenged-ballot envelopes; plexiglass barriers of sufficient size to protect the observers and Board agents; and masks, hand sanitizer, gloves and disinfecting wipes. Memorandum GC 20-10 further requires an employer's written certification of how many individuals have been present in the facility within the preceding 14 days who have tested positive for COVID-19; who have been directed by a medical professional to proceed as if they have tested positive for COVID-19; who are awaiting results of a COVID-19 test; who are exhibiting symptoms of COVID-19; or who have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19.

The Employer is willing and able to comply with most requirements of this Memorandum. However, the spacious polling area proposed by the Employer is nonetheless insufficient to allow for safety, social distancing, and Board agent control of the no-electioneering zone in an election of this magnitude.

A voter list including 1200 names is by its nature unwieldy. Accordingly, observers take longer to find the correct name than they would in a smaller election. Board agents sometimes mitigate this issue by allowing each party to have two observers at the election and splitting the list in half so that voters can use two separate check-in tables. This would not be possible where social distancing allows for only two observers. Likewise, Board agents, who have more experience handling voter lists than do employee observers, often sit beside or lean over observers to help them find the correct names quickly. Social distancing does not allow Board agents to proceed in this manner. Even if a Board agent were to have a separate copy of the list and tell the observers, from a safe distance, which part of which page to examine, the time elapsed would be far greater than the time it would have taken the Board agent simply to point at the correct name under ordinary circumstances. Furthermore, the Employer's proposal allows for one or two Board agents, thus making it unlikely that a Board agent's attention could be spared to monitor the list. Just as there is insufficient space in the proposed location for four observers, there is insufficient space for the three or four Board agents who might typically be assigned to run an election of this size. Likewise, there is insufficient space for Spanish or Creole interpreters.

Once a voter has been checked off the list, he or she is given a ballot. A Board agent must keep track of all ballots in the voting area regardless of whether those ballots have yet to be distributed, are in a voter's hand as the voter walks to or from a booth, or are in the ballot box. This goal is virtually impossible to achieve where multiple voting booths are scattered along multiple walls and the Board agents are confined to plexiglass boxes.

Additionally, further delays in moving a voter through the voting process arise when the Board agent distributing ballots needs to complete the paperwork required for challenged ballots. While there are no agreed-upon challenges in this matter, it is unlikely that such a large voting unit will not require challenges to ballots of employees whose per diem hours put their eligibility in dispute, whose names are not on the list, whose names the observers cannot find, or whose lack of fluency in English has led to a communication error. Often in large elections, Board agents designate a challenge agent and a challenge table when large amounts of voters approach the polling area simultaneously. This precaution is not possible where social distancing and limited staffing are required.

Another bottleneck may occur if Board agents are forced to limit the number of voting booths because there are not enough Board agents to monitor the booths or sufficient space to set up the booths six feet from one another. Voters also require more time to read a ballot printed in three languages than they require to read a ballot printed in one language. The difference may be mere seconds, but those seconds multiply quickly when 1200 individuals are eligible to vote.

The large size of the unit means that even under the best of circumstances, employees would have to stand in line. The line, naturally, will grow longer if there are delays due to observers struggling to find names without help, insufficient staffing to delegate challenged ballots to a third or fourth Board agent, additional time spent communicating with non-English speakers, and voters waiting for booths or taking extra time to find the correct language on the ballot. The Employer plans to allow up to 100 employees to wait in line and turn away voters who arrive when 100 voters are already in line. Turning away voters and assuming that they will be able to find another opportunity to vote is inherently problematic and would likely result in objections if, indeed, an employee failed to return.

Additionally, the layout of the proposed election does not allow Board agents to appropriately monitor the line of voters so as to enforce no-electioneering rules. Board agents inside the bay will be unable to see the parking lot. A Board agent leaving his or her plexiglass box defeats the purpose of the plexiglass box. In any event, the insufficient staffing of the election mandated by the amount of space inside the bay would likely result in no Board agent being available to monitor the line as the Board agents attempted to distribute ballots; write challenges; answer employee questions; monitor the voting list; and keep the booths, ballots, and ballot box within sight. All of these tasks can be performed simultaneously by one Board agent at a small election. All of these tasks cannot be performed simultaneously by one Board agent at a 1200-voter election.

The necessarily long hours in a facility where COVID-19 is undeniably present also expose the Board agents and observers to potential infection at a level far exceeding normal. The Employer argues that running the election is no different from a trip to the grocery store. This argument is not persuasive. Each interpersonal interaction allows the virus an opportunity to spread. The election does not replace a trip to a grocery store; it adds a minimum of 18 hours of polling exposure to ordinary grocery store exposure. Therefore, the cumulative exposure of all involved increases exponentially. Because employees work such varied shifts, some voters will be required to make an extra trip to their place of work in order to vote, and they, too, will be required to increase their exposure to the virus. The State of Emergency in New Jersey and Governor Murphy's Executive Orders continue to encourage the public to limit unnecessary large gatherings and social events for this very reason.

Additionally, a manual election would automatically disenfranchise certain employees. This is not a mere hypothetical. At the time of the hearing, multiple employees were not at work because they had tested positive for COVID-19 or were awaiting the results of tests. In the course of performing their job duties, many unit employees come in contact with COVID-positive patients and therefore have a higher-than-average risk of contracting the disease themselves. Employees must pass a temperature and wellness check to enter the Employer's facility; thus, any employee unlucky enough to be ill, under quarantine, or

simply warm enough to be considered potentially feverish on the day of the election will automatically forfeit his or her right to vote.⁵

Under ordinary circumstances, a sick employee might still vote; he or she would not necessarily be barred from the facility. Under ordinary circumstances, it is reasonable to expect that few if any employees would be sick at all. However, under current circumstances, as the pandemic continues to rise and fall in New Jersey, it is almost certain that multiple employees will be sick. Multiple employees were unable to work due to COVID-19 at the time of the hearing. These are, indeed, the most extraordinary of circumstances as contemplated by the Board in *San Diego Gas and Electric.*, 325 NLRB 1143, 1144 (1998).

The Board in San Diego Gas reviewed the circumstances under which it may be appropriate to direct a mail ballot election. The Board's longstanding policy has been that, as a general rule, representation elections should be conducted manually. Recognizing, however, that there are some extraordinary circumstances that would make it difficult for eligible employees to vote in a manual election, the Board vested Regional Directors with broad discretion to determine the method by which elections shall be conducted. Under the guidelines set forth in San Diego Gas, a mail ballot election may be appropriate where eligible voters are "scattered" because of their job duties in terms of geography or varied work schedules, so that all employees cannot be present at a common location at common times to vote manually. When these situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of the parties and the efficient use of Board resources.

Because of the nature of the COVID-19 crisis in New Jersey, the employees at issue here are "scattered" in an unusual way: at any given time, multiple employees are likely to be unable to enter the Employer's facility due to illness or quarantine. A manual election would make it not just difficult but impossible for a number of employees to vote. The employees are also more traditionally "scattered" in that they work very different schedules on all days at all hours. As a result, many employees would need to make an extra trip to the Employer's facility to vote, thereby increasing their exposure to COVID-19.

Conducting an election manually will also expose non-employee participants to the risk of contracting the disease, including multiple Board agents and any non-employee representatives who choose to be present for any pre-election conference and on-site ballot count. While the Employer's proposed safeguards for a manual election are commendable, COVID-19 is already present both inside and outside the Employer's facility. Given the documented presence of the disease and the possibility of asymptomatic spread, the risk of spreading the disease to employees during the election, and to non-employee participants, is too great at this time.⁶

The Board has consistently taken the position that the pandemic constitutes extraordinary circumstances pursuant to *San Diego Gas*. For example, on August 19, 2020, in *Daylight Transport*, 31–RC–262633 (August 19, 2020) the Board, in denying the employer's request for review of a decision directing a mail-ballot election, advised:

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⁵ The Employer suggests in its brief that it would be willing to set up a separate voting session for COVID-positive voters. It would be contrary to all New Jersey guidelines to encourage COVID-positive individuals to leave quarantine and interact with others so as to preserve their right to vote.

⁶ The Employer entered into evidence a document titled "Guidelines for Healthy In-Person Voting," published by the Brennan Center and the Infectious Diseases Society of America. The introduction to this document reads, in part, "voting by mail is the safest option to avoid Covid-19 transmission."

The Board will continue considering whether manual elections should be directed based on the circumstances then prevailing in the Region charged with conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10...

The Employer notes that the Board generally prefers manual election. While the Board has indeed expressed a general preference for manual balloting, it has never hesitated to ballot by mail when the circumstances warrant it. Indeed, the Board's preference for manual elections is not to be interpreted as a suggestion that mail balloting is somehow inferior or a less reliable or effective means of determining employees' representational desires. As the Board noted in *London's Farm Dairy, Inc.*, 323 NLRB 1057, 1058 (1997):

[W]hile we agree with our dissenting colleague that the Agency has a proud long tradition of conducting elections by manual balloting and that most elections have been and are conducted manually, it has an equally long history of conducting elections by mail. From the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail. See, for example, *Lykes Bros. S.S. Co.*, 2 NLRB 102, 108, 111 (1936); *United Press Assns.*, 3 NLRB 344, 352 (1937); *Pacific Greyhound Lines*, 4 NLRB 520, 539 (1937); *Pacific Lumber Inspection Bureau*, 7 NLRB 529, 534 (1938); *Salt River Valley Water Users Assn.*, 32 NLRB 460, 472 (1941); *Continental Bus Systems*, 104 NLRB 599, 601(1953); and *National Van Lines*, 120 NLRB 1343 (1958).

The majority opinion in *London's Farm Dairy, Inc.*, holds that balloting by mail is not less effective and does not lend itself to subterfuge, coercion, invasion of privacy or other abuse. As the Board observed then, "Indeed, in the 62-year history of the Act, there has been only one reported instance of such abuse, see *Human Development Assn.*, 314 NLRB 821 (1994), and there is a similar record in the 71-year history of the Railway Labor Act (RLA), under which the use of mail ballots in representation elections has been the rule and not the exception." Also note that no manual election has been conducted by the National Mediation Board (NMB) under the RLA since 1987. Simply put, the Board has a long and proud tradition of conducting manual- and mail-ballot elections alike. It simply prefers manual elections when, unlike here, they are feasible, safe, and practical to conduct.

I conclude that, under these circumstances, a mail ballot election is appropriate. A mail election has no apparent drawbacks, while an effective manual election cannot be run in compliance with GC Memorandum 20-10 at this time. For various reasons discussed above, it is highly impractical to attempt to create laboratory conditions for 1200 voters while social distancing in a facility where COVID-19 is present. However, a mail ballot election will enfranchise employees who cannot enter the Employer's facility for health reasons or due to positive COVID tests. In addition, a mail ballot election will protect the health and safety of voters, Agency personnel, the parties' representatives, and the public during the current health crisis.

Conclusion

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by HEALTH PROFESSIONALS AND ALLIED EMPLOYEES, HPAE, AFT/AFL-CIO.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. On **October 2, 2020**, ballots will be mailed to voters by National Labor Relations Board, Region 22. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 22 office by close of business on **October 23, 2020**.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by October 12, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 22 Office at (862) 229-7065 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities including but not limited to Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, I further direct that the ballot count will take place virtually, on a platform (such as Zoom, Skype, WebEx, etc.) to be determined by the Regional Director, at 10:00 am between **November 6 and November 13 ,2020**. The Region will provide the parties with at least 24-hours advance notice of the ballot count. Each party will be allowed to have one official, designated observer attend the virtual ballot count.

If the date the ballots are due to be deposited by Region in the mail, or the date set for their return, or the date, time, and place of the count for the mail ballot election are postponed or canceled, the Regional Director, in his discretion, may reschedule such dates, times, and places for the mail ballot election.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending September 5, 2020, the payroll period immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military service of the United States may vote by mail in the same manner and pursuant to the same voting schedule as established herein for all other Unit employee voting.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an

economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. Because this election is being conducted by mail, it is requested that the Employer provide self-adhesive mailing labels (to the Region) of the eligible employees' names and addresses.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **SEPTEMBER 17, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Notices of Election will be electronically transmitted to the parties, if feasible, or by overnight mail if not feasible. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. You must also distribute the Notice of Election electronically to any employees in the unit with whom you customarily communicate electronically. In this case, the notices must be posted and distributed no later than 12:01 a.m. on **SEPTEMBER 29, 2020**. If the Employer does not receive copies of the notice by September 27, 2020, it should notify the Regional Office

immediately. Pursuant to Section 102.67(k), a failure to post or distribute the notice precludes an employer from filing objections based on nonposting of the election notice.

To make it administratively possible to have election notices and ballots in a language other than English, please notify the Board agent immediately if that is necessary for this election. Also, if special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board agent as soon as possible.

Please be advised that in a mail ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: September 15, 2020

DAVID E. LEACH III, REGIONAL DIRECTOR NATIONAL LABOR RELATIONS BOARD REGION 22

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